

or not, the reason why this writ should not be renewed is that the defendants would thereby be deprived of their defence of limitation; and I think the learned Judge was right in following the decision in *Battersby v. Anglo-American Oil Co. Ltd.*⁽⁶⁾. It was argued that that decision ought not to have any application here because the law here is not the same as in England and by section 3 of the Limitation Ordinance limitation is only a defence if it is pleaded. But in the present case the defendants have had no opportunity to plead it because the suit had not reached the stage of pleading, and to allow a renewal of the writ will prejudice their right to plead it. Our attention was drawn to the case of *Sheldon v. Brown Bayley's Steel Works Ltd. & Dawnays Ltd.*⁽⁸⁾, in which a dictum of Goddard, L.J. in *Battersby's* case to the effect that a writ which had not been served within twelve months was a nullity was not approved. But that is not the question here. Nor was it necessary for the decision in *Battersby's* case. The question here is the same as in *Battersby's* case—namely, whether the Court ought to exercise its discretion to renew a writ when the renewal would deprive a defendant of the benefit of a plea of limitation which had accrued. I can see no reason why the principle of *Battersby's* case should not apply to the present case, and I would dismiss this appeal with costs.

Pretheroe, J.:—In this appeal I have had the advantage of reading the judgment prepared by the learned Chief Justice of Singapore. I am in complete agreement with that judgment and have nothing to add thereto.

Appeal dismissed.

Solicitors for the appellants: *Presgrave & Matthews*.
Solicitors for the respondents: *Hogan, Adams & Allan*.

Re OTHMAN BIN ABU BAKAR, Ex parte OFFICIAL ASSIGNEE.

[O. C. J. (Buhagiar, J.) December 29, 1953]

[Johore Bahru — Muar Bankruptcy No. 9 of 1936]

*Bankruptcy Enactment—Subsequent bankruptcy
—Administration of—After-acquired property.*

Receiving and Adjudication Orders were made against the bankrupt in 1936 and before he obtained his discharge in that bankruptcy, subsequent Receiving and Adjudication Orders were made in 1953. The point for consideration was the manner in which the two bankruptcies were to be administered.

Held: the two bankruptcies must be administered separately. Any property acquired by the bankrupt since the first adjudication must be treated as assets in the first bankruptcy and cannot go to the benefit of the creditors in the second bankruptcy until the creditors in

the first bankruptcy have been paid in full or until the bankrupt has obtained a discharge in the first bankruptcy.

Cases referred to:—

- (1) *Ex parte Watson, in Re Roberts* (1879) 12 Ch. D. 300.
- (2) *Morgan v. Knight* (1864) 15 C.B.N.S. 669.
- (3) *Re Betts, Ex parte Betts* (1897) 1 Q.B. 50.
- (4) *Ex parte Beardmore, re Clark* (1894) 2 Q.B. 239.
- (5) *Ex parte Ford* 1 Ch. D. 521.
- (6) *In re Temple* (1947) Ch. 345.

BANKRUPTCY.

M. Rajendram, (Ag. A.O.A.) for the Official Assignee.

The facts and arguments appear sufficiently from the judgment.

Cur. Adv. Vult.

Buhagiar, J.:—Receiving and Adjudication Orders were made against Othman bin Abu Bakar (hereinafter referred to as the bankrupt) on the 3rd of May, 1936, the total liabilities disclosed in the Statement of Affairs amounted to \$1,431.45 due to eighteen creditors; the only asset disclosed was a bicycle valued at \$15. The bankrupt has paid instalments amounting to \$634.63 since he was ordered by this Court on the 17th of January, 1937, to pay \$5 per mensem for the benefit of his creditors. The bankrupt had not obtained his discharge when Receiving and Adjudication Orders were made against him on 22nd February, 1953, on his own petition.

On 1st December, 1953, the Official Assignee filed an application for directions asking whether:—

(a) The bankrupt could now apply for his discharge in the First Bankruptcy.

(b) The sums standing to the credit of the bankrupt in his account under the first Receiving Order could be paid out to the creditors and they be given liberty to prove in the Second Bankruptcy for any balances due to them.

(c) Alternatively, whether an order of discharge could be granted subject to a judgment being entered in favour of the Official Assignee in respect of the balance due to the creditors who proved under the First Bankruptcy after payment of further dividend, and whether the Official Assignee could be given permission to prove in the Second Bankruptcy in respect of the judgment.

The point for consideration is the manner in which the two bankruptcies are to be administered. An adjudication in bankruptcy is no bar to further bankruptcy proceedings, and a second or subsequent adjudication order may be made in respect of liabilities incurred after the date of the Receiving Order in the

prior bankruptcy (*Ex parte Watson, in Re Roberts*⁽¹⁾); *Morgan v. Knight*⁽²⁾. The Court, however, has a discretion in such a case, and may refuse to make a further receiving order where satisfied that there is no asset available for administration under the subsequent bankruptcy (*Re Betts, Ex parte Betts*⁽³⁾).

In the United Kingdom, provision dealing with second and subsequent bankruptcies was first introduced by section 11 of the Bankruptcy and Deeds of Arrangement Act, 1913; this provision was incorporated in section 39 of the Bankruptcy Act, 1914, which was later replaced by section 3 of the Bankruptcy Act, 1926. This section substantially alters what had been the law prior to the Act of 1914; it provides that, in the event of a second or subsequent bankruptcy any property acquired by a bankrupt since the first adjudication, which at the date of the presentation of the subsequent petition has not been distributed among the creditors in the first bankruptcy, is (subject to any dispossession made by the official receiver or trustee, without the knowledge of the presentation of the subsequent petition, and subject to the provisions of section 47) to vest in the trustee in the second bankruptcy, but any unsatisfied balance of the debts provable in the first bankruptcy may be proved in the subsequent bankruptcy by the trustee.

The Bankruptcy Enactment of Johore (En. No. 74) was not specifically repealed but was superseded by the Bankruptcy Enactment of the F.M.S. by virtue of the Bankruptcy (Transitional Provisions) Ordinance, 1946 (M.U. No. 17 of 1946).

The Bankruptcy Enactment (F.M.S. Cap. 55) is modelled on the Bankruptcy Act, 1883, of the United Kingdom and, in default of a statutory provision in the local law of bankruptcy similar to section 39 of the United Kingdom Act, it is necessary, when looking for assistance to English authorities, to refer to cases decided under the Act of 1883.

Now under section 42 of the Bankruptcy Enactment (corresponding to section 44 of the United Kingdom Act of 1883) the property of the bankrupt divisible amongst his creditors comprises all such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy or may be acquired by or devolve on him before his discharge. In *Ex parte Beardmore, re Clark*⁽⁴⁾ following *Ex parte Ford*⁽⁵⁾ it was held that after-acquired property must be treated as assets in the first bankruptcy; it often happens that the trustee in the first bankruptcy has a claim to all the assets there might be and there is no possibility of there being anything for the new creditors, and it is in such a case that a second petition for an

adjudication order would be dismissed [*Ex parte Betts, re Betts*⁽³⁾ (*vide supra*)].

The position is the same in England as it was before 1914 in the case of the second bankruptcy being a foreign bankruptcy; in *In re Temple*⁽⁶⁾ it was held that section 39 of the Bankruptcy Act, 1914, is confined to bankruptcies in the United Kingdom and that in the absence of any enactment vesting after-acquired property in the trustee of a subsequent foreign bankruptcy the property belonged to the English trustee and was divisible among the creditors in the English bankruptcy.

Under the Bankruptcy Enactment the two bankruptcies in the present case must be administered separately; the only property available for distribution is the amount of \$5 per mensem which is being paid by the bankrupt on the order made in 1937 under section 50 of the Bankruptcy Enactment; this property must be treated as assets in the first bankruptcy, and no property acquired by the bankrupt can go to the benefit of the creditors in the second bankruptcy until the creditors in the first bankruptcy have been paid in full or until the bankrupt has obtained a discharge in the first bankruptcy.

The order of the 17th January, 1937, was made when the bankrupt's income was \$70 per mensem; he is now employed as a Clerk in the Education Department, Muar, on a basic salary of \$300 per mensem and his total monthly income including allowances is \$470. He should therefore be in a position to pay a larger sum for the benefit of his creditors.

I accordingly direct as follows:—

(a) That the two bankruptcies be administered separately;

(b) That the Official Assignee apply to the Court for a variation of the order made on the 17th January, 1937, with the object of increasing the amount paid monthly by the bankrupt; and

(c) That the amounts so paid be assets in the first bankruptcy.

Order accordingly.

M. V. SAMY v. M. NAGAPPA PATHER.

[A. C. J. (Thomson, J.) January 19, 1954]

[Ipoh — Civil Appeal No. 14 of 1953]

Procedure — Subordinate Courts Rules, 1950, O. 3 r. 2. — Interpretation of — Original document in language other than English — Admissibility in evidence of such document — "Proceeding or document" — Meaning of.

The defendant (appellant) had tendered an account book mainly kept in the Tamil language written in Tamil characters but with the dates and amounts of money in